

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2888 of 1984

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

JADEJA GANPATSINH KANUBHA

Versus

STATE OF GUJARAT & ORS.

Appearance:

MR DM THAKKAR for Petitioner

MR NN PANDYA for Respondent No. 1 to 3

MR YS MANKAD for Respondent No.4

CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 23/07/96

ORAL JUDGMENT

Heard learned counsel for the parties. The petitioner has taken loan from the society, respondent No.4 herein for purchase of Tractor. He made default in payment of installments of loan and as such the respondent No.4 filed Lavad suit No.12 of 1982 for recovery of amount of Rs.92,000/- and odd. The Lavad suit has been withdrawn by the Society without prejudice to their right to proceed to recover the amount in

question under the provisions of Section 106 of the Gujarat Co-operative Societies Act, 1961(hereinafter referred to as the 'said Act'). The society has then proceeded u/s.106 of the said Act against the petitioner and the Assistant District Registrar of the Co-operative Societies (Cooperation) issued a certificate u/s.106 of the said Act for recover of the amount of loan advanced to the petitioner as land revenue. This certificate is challenged by the petitioner by filing this Special Civil Application.

2. Shri D.M. Thakkar, learned counsel for the petitioner, made twofold contentions before this Court. Firstly, it is contended by the learned counsel for the petitioner that once the society has decided to recover the amount of loan by filing Lavad suit, it has no right to resort to the provisions of Sec.106 of the said Act for effecting recovery of amount of loan. It has next been contended by learned counsel for the petitioner that the respondent No.2 has not given notice or opportunity of hearing to the petitioner before issuing certificate for recovery of amount of loan against him u/s.106 of the said Act.

3. On the other hand, the learned counsel for the respondent No.4, Shri Y.S. Mankad submitted that Section 106 has been inserted in the Gujarat Co-operative Societies Act, 1961 after filing of the Lavad suit by the society. Under Sec.106, a special provision has been made for recovery of loans advanced by the society to its members for the purchase of tractors etc., and as such, it has all right to resort to the said remedy after withdrawing the Lavad suit. Replying to the second contention of the learned counsel for the petitioner, Shri Y.S. Mankad, learned counsel for the respondent No.4 contended that the petitioner has been given notice u/s.106 of the said Act and after giving full opportunity of hearing, the respondent No.2 has issued certificate for recovery of amount of loan as land revenue u/s.106 of the said Act.

4. I have given my thoughtful consideration to the submissions made by the counsel for the parties. The learned counsel for the petitioner does not dispute that the provisions of Section 106 were inserted in the said Act after filing of the Lavad suit by respondent No.4. After insertion of the said provisions, the respondent No.4 had two remedies for recovery of the loan amount at its discretion. Perusal of the provisions of Section 106 of the said Act gives out that the legislature has given to the society a speedy remedy for recovery of

outstanding amount of loans from the members. After inserting the aforesaid provisions, the respondent No.4 was perfectly within its competence and justified to resort to the remedy as available to it for recovery of the amount from the petitioner u/s/106 of the said Act. Accordingly, filing of Lavad case will not come in the way of respondent No.4 to resort to the remedy as provided to it by legislature for the recovery of amount of loan u/s.106 of the said Act. A reference may have to the decision of Supreme Court in the case of A.P.S.F. Corpn. v. M/s. Gar R.R. Mills, reported in JT 1994 (1) SC 586, wherein the Apex Court has held that when two remedies are available to the party for recovery of amount of loan, it is open to it to resort to either of the remedies.

5. In view of the facts and circumstances of the case as well as in view of the above decision of the Apex Court, the first contention of the learned counsel for the petitioner is devoid of any substance. The second contention raised by learned counsel for the petitioner is also devoid of any substance. Section 106 of the said Act empowers the Registrar to issue a certificate for recovery of arrears of any sum advanced by the society to any of its members after making such inquiry as it deems fit. It is not in dispute that the powers of the Registrar have been delegated to the Assistant District Registrar of Co-operative Societies, Co-operation, in the present case. In the reply, the respondents have come up with the case that the society has given notice to the petitioner u/s.106 of the said Act, and thereafter papers were sent to the Extension Officer (Cooperation) with the Taluka Panchayat office, Bhachau. The Extension Officer, Bhachau, served a notice dated 23rd September 1983, u/s.106 of the said Act upon the petitioner. The petitioner presented himself before the said Officer on 13th October 1983 and gave statement in which he stated that the debt was due and was not paid and he signed that statement. Thereafter, the Extension Officer (Cooperation) sent the papers to the Assistant District Registrar, Bhuj on 17th October 1983. The Assistant District Registrar, thereafter issued a certificate u/s.106 of the said Act on 28th November 1983 and it was sent to the Special Recovery Officer. These averments made by the respondents have not been controverted by the petitioner. The petitioner has taken point that the Assistant District Registrar has not given notice. Section 106 of the said Act nowhere provides for giving of notice to the petitioner. It only provides that the Registrar will issue certificate for recovery of loan amount only after he is satisfied. The satisfaction has

to be of the Registrar and in the present case, he has taken all care and he also recorded the statement of the petitioner through his subordinate officer who has given notice to the petitioner. In view of these facts, it cannot be said that the principles of natural justice have been violated. The contention of the learned counsel for the petitioners that the Assistant District Registrar has not given notice to him is devoid of any substance and the provisions of Section 106 of the said Act have been complied with. I therefore do not find any illegality whatsoever in the action of the respondent No. 2 to issue certificate u/s.106 of the said Act.

6. Otherwise also, this Court has given indulgence more than what was necessary to the petitioner, to repay the amount of loan, but he has not availed that opportunity. The petitioner was directed to make payment of loan by installments, but the counsel for the respondents contended that the petitioner has not complied with the order of this Court also. At one point of time, tractor has also been seized by respondent No.4, but this Court has, by grant of interim relief, on payment of Rs.1100/-, ordered to return the tractor to the petitioner, but the petitioner has not complied with the said order also by making payment of installment of loaned amount as ordered. Taking into consideration totality of the facts and circumstances of the case, as this writ petition is wholly misconceived, the same is dismissed. Ad-interim relief granted by this Court stands vacated. The petitioner shall pay Rs.1,000/- by way of costs of this petition to respondent No.4. Rule is discharged.

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(sunil)